

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANA SANTOS,

Plaintiff,

-against-

KIRSCHENBAUM & PHILLIPS, PC,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 13 2011 ★

BROOKLYN OFFICE
CV 11 - 2851

**VERIFIED COMPLAINT and DEMAND
FOR JURY TRIAL
KORMAN, J.**

CARTER, M.J.

NOW COMES Plaintiff, Ana Santos ("Plaintiff"), by and through her attorneys, Krohn & Moss, Ltd., for her Verified Complaint against Defendant, Kirschenbaum & Phillips, Pc, ("Defendant"), alleges as follows:

Nature of the Action

1. This action is brought by Plaintiff pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

Parties

2. Plaintiff is a natural person residing in Brooklyn, County of Kings, New York.
3. Plaintiff is allegedly obligated to pay a debt and is a consumer as defined by 15 U.S.C. § 1692a(3).
4. Defendant is a collection law firm having its principal place of business located in Levittown, County of Nassau, New York.
5. Defendant is a debt collector as defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

Jurisdiction and Venue

7. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”

8. Because Defendant has an office and conducts business in the state of New York, personal jurisdiction is established

9. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

Factual Allegations

10. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor, MBNA Consumer Finance, with an account number ending in 4035 (Defendant’s File No. C511862).

11. Plaintiff’s debt owed to MBNA Consumer Finance arises from transactions for personal, family, and household purposes.

12. On February 23, 2009, Plaintiff’s counsel faxed a notice of representation and a cease and desist letter to Defendant. *See* Plaintiff’s letter to Defendant and fax confirmation here to as Exhibit A.

13. On April 20, 2009, Plaintiff’s counsel faxed a notice of representation letter to Defendant. *See* Plaintiff’s letter to Defendant and fax confirmation here to as Exhibit B.

14. Despite receiving Plaintiff’s counsel’s letters here to as Exhibits A and B, Defendant communicated with Plaintiff after February 23, 2009, and April 20, 2009, in an

attempt to collect a debt. See Defendant's letter to Plaintiff dated January 30, 2011, here to as Exhibit C.

CLAIM FOR RELIEF

15. Defendant's violations of the FDCPA include, but are not limited to, the following:

- a. Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.
- a. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after Defendant received Plaintiff's cease and desist letter.

16. Plaintiff is entitled to her attorneys' fees and costs incurred in this action.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

- (1) Statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k;
- (2) Reasonable attorneys' fees, costs pursuant to 15 U.S.C. § 1692k; and
- (3) Awarding such other and further relief as may be just, proper and equitable.

Dated: June 2, 2011

KROHN & MOSS, LTD.

By: 

Adam T. Hill
KROHN & MOSS, LTD.
120 W. Madison St., 10th Fl.
Chicago, Illinois 60602
Telephone: 312-578-9428
Telefax: 866-289-0898
ahill@consumerlawcenter.com
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, Ana Santos, hereby demands a jury trial in this matter.

VERIFICATION

STATE OF NEW YORK)

COUNTY OF KINGS)

Plaintiff, ANA SANTOS, states as follows:

1. I am the Plaintiff in this civil proceeding.
 - a. Yo soy el Demandante en este procedimiento civil.
2. Spanish is my native language.
 - a. Español es mi idioma natal.
3. I had someone translate to me the above-entitled civil Complaint from English to Spanish prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
 - a. Tuve alguien que me traduzcan el pleito civil que mi abogados prepararon de inglés a español y yo opino que todos los hechos contenidos es verdad, según de mi conocimiento, después de indagación razonable.
4. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
 - a. Creo que este pleito civil esta hecho bien y esta justificado por la ley o por un argumento de buena fe para la extensión, la modificación o la reversión de la ley existente.
5. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
 - a. Creo que este pleito civil no es interpuesto para un impropio propósito, como molestar a cualquier Acusado, demorar esta causa a cualquier Acusado, ni crear un aumento innecesario en el costo del pleito a cualquier Acusado.
6. I have filed this Complaint in good faith and solely for the purposes set forth in it.
 - a. He archivado este pleito en de buena fe y para los fines expuso en ello.
7. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
 - a. Cada exhibición que proporcione a mis abogados que ha sido incluido a este pleito es una copia verdadera y correcta de la original.
8. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.
 - a. Menos redacciones claramente indicados hechas por mis abogados donde apropian, yo no he alterado, he cambiado, he modificado o he fabricado estas exhibiciones, sino que parte de las exhibiciones conectadas puede contener algunas de mis propias anotaciones escrito a mano.
9. Pursuant to 28 U.S.C. § 1746(2), I, ANA SANTOS, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

a Según al 28 U S C § 1746(2), yo, ANA SANIOS, declaro (o certifico, verifico o indico) bajo pena de perjurio que el precedente es verdad y correcto.

Dated: 5-12-11

ANA SANTOS
ANA SANTOS

EXHIBIT A

Debt Counsel for Seniors & the Disabled



23 February 2009

BY FAX ONLY: 516-742-2735
Page 1 of 3

Kirschenbaum & Phillips, P.C.
108 East Jericho Turnpike
Mineola NY 11501-3121

Re: Ana Santos
Alleged creditor: MBNA Consumer Finance
Your file or reference No.: C511862
Our file No.: 10362

Dear Sir or Madam:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws.

This letter serves as notice that my client hereby disputes the above-referenced alleged debt and requests validation of it in accordance with 15 U.S.C. § 1692g. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must cease contacting them according to §§ 1692c(a)(2) AND 1692c(c) of the Fair Debt Collection Practices Act, since this letter not only serves as notice of our representation of this client but also contains a cease and desist order signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Finally, please be advised that this client is insolvent and cannot afford to file for bankruptcy. They exist exclusively on income from non-garnishable sources; e.g., social security, disability, veteran's or retirement benefits. I have also enclosed my client's affidavit swearing to this fact. As you should know, this income is protected from execution, levy, attachment, garnishment and other legal process by federal law. The attachment or attempted attachment of these benefits is considered a violation of § 1692(f) of the Fair Debt Collection Practices Act, so please govern your actions accordingly.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jerome S. Lamet".

Jerome S. Lamet, Supervising Attorney
Debt Counsel for the Seniors and the Disabled
Cc: Ana Santos

Jerome S. Lamet, Supervising Attorney
The Pontiac Building
542 South Dearborn
Suite 1260
Chicago, Illinois 60605
V: (312) 939-2221
F: (312) 939-2741

TRANSMISSION VERIFICATION REPORT

TIME : 02/23/2009 10:01
NAME : JEROME LAMET LTD
FAX : 13123563199
TEL : 13129392221
SER.# : BR008J797996

DATE, TIME
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Debt Counsel for Seniors & the Disabled

DCSD

23 February 2009 ✓

BY FAX ONLY: 816-742-2738 ✓
Page 1 of 3

Kirschbaum & Phillips, P.C.
106 East Jericho Turnpike
Mineola NY 11501-3121

Re: Ana Santos
Alleged creditor: MBNA Consumer Finance
Your file or reference No.: C511882 ✓
Our file No.: 10362

Dear Sir or Madam:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws.

This letter serves as notice that my client hereby disputes the above-referenced alleged debt and requests validation of it in accordance with 15 U.S.C. § 1692g. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must cease contacting them according to §§ 1692c(a)(2) AND 1692c(e) of the Fair Debt Collection Practices Act, since this letter not only serves as notice of our representation of this client but also contains a cease and desist order signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Finally, please be advised that this client is insolvent and cannot afford to file for bankruptcy.

EXHIBIT B

Jerome S. Lamet Ltd.

Attorneys at Law

Lawyers United for Debt Relief - National Legal Systems- Debt Counsel for Seniors and the Disabled
PONTIAC BUILDING, 542 SOUTH DEARBORN ST. SUITE 1260, CHICAGO, ILLINOIS 60605

TELEPHONE (312) 546-5829 FAX (312) 356-3199

Fax Cover Sheet / If You Do Not Receive the Number of Pages Listed, Please Call Our Office at 312-546-5829

Mr. Michael L. Kohl
Kirschenbaum & Phillips
3000 Hempstead Turnpike, 4th Floor
Levittown, NY 11756

No. of pages: cover only

April 20, 2009 ✓

By Fax and US Mail: 516-742-2735

Re: KMT Group, LLC v. Ana Santos; Your file no. C511862

Dear Mr. Phillips,

As you already know, my firm represents the above-mentioned defendant for the purpose of enforcing their rights against debt collectors under all applicable federal laws. We do not represent the client with regard to this state lawsuit and will not be filing an appearance on the client's behalf. We will represent them in federal court, however, should any violations of the Fair Debt Collection Practices Act or Social Security Act occur.

In the interest of resolving this matter, please be advised that, as I have informed you previously, this individual is insolvent and does not have any garnishable income or assets that may be attached to satisfy a judgment. I have requested proof of income from the client showing that the sole income from exempt sources. I will forward that to you upon receipt. Debt Counsel for Seniors and the Disabled exclusively represents individuals whose sole income is from social security, disability, or other protected sources; income that is consequently immune from attachment under federal law. If you do not have an affidavit swearing to this fact in your file, please let me know and I will be more than happy to have the client provide one for you.

Please keep in mind that all of our clients are elderly or disabled or both. In tens of thousands of state court collection lawsuits against our clients, I assure you few debt collectors have collected one single penny from any of our clients. If you wish to levy on this client's meager personal property, I would appreciate it if you would be so kind as to inform this office so that we may direct the client to the appropriate legal aid or bankruptcy resource.

Should this client receive some kind of windfall they will pay their debts. All of our clients want to pay their bills; they simply cannot because they have fallen prey to the lending tactics of credit card companies.

Thank you in advance for your attention to this matter.

Best regards,



Jerome S. Lamet
cc: Client

THE ORIGINAL OF THIS DOCUMENT WILL BE SENT BY:

FIRST CLASS MAIL

FEDEX

CERTIFIED MAIL

WILL NOT BE SENT TO THIS PARTY

THE FOLLOWING MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE

TRANSMISSION VERIFICATION REPORT

TIME : 04/21/2009 13:34
NAME : JEROME LAMET LTD
FAX : 13123563199
TEL : 13128392221
SER. # : BROD8J797996

DATE, TIME
FAX NO. /NAME
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04/21 13:34
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Jerome S. Lamet Ltd.

Attorneys at Law

Lawyers United for Debt Relief - National Legal Systems- Debt Counsel for Seniors and the Disabled

PONTIAC BUILDING, 542 SOUTH DEARBORN ST. SUITE 1260, CHICAGO, ILLINOIS 60605

TELEPHONE (312) 546-5829 FAX (312) 356-3199

Fax Cover Sheet / If You Do Not Receive the Number of Pages Listed, Please Call Our Office at 312-546-5829

Mr. Michael L. Kohl
Kirschenbaum & Phillips
3000 Hempstead Turnpike, 4th Floor
Levittown, NY 11756

No. of pages: cover only

April 20, 2009 ✓

By Fax and US Mail: 516-742-2735 ✓

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In the interest of resolving this matter, please be advised that, as I have informed you previously, this individual is insolvent and does not have any gainable income or assets that may be attached to satisfy a judgment. I have requested proof of income from the client showing that the sole income from exempt sources. I will forward that to you upon receipt. Debt Counsel for Seniors and the Disabled exclusively represents individuals whose sole income is from social security, disability, or other protected sources; income that is consequently immune from attachment under federal law. If you do not have an affidavit swearing to this fact in your file, please let me know and I will be more than happy to have the client provide one for you.

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Should this client receive some kind of windfall they will pay their debts. All of our clients want to pay their bills; they simply cannot because they have fallen prey to the lending tactics of credit card companies.

Thank you in advance for your attention to this matter.

EXHIBIT C

Kirschenbaum & Phillips, P.C.

Attorneys at Law

3000 Hempstead Turnpike, 4th Floor, Levittown NY 11756-1338

NYC Department of Consumer Affairs Lic. No. 1322856

Toll Free: (866) 746-1144 Telephone: (516) 746-1144 Fax (516) 742-2735

January 30, 2011

Ana Santos
1768A Sterling Pl
Brooklyn NY 11233-4502

Re: Our File #: C511862
KMT GROUP, LLC A/A/O MBNA CONSUMER FINANCE
ANA SANTOS
Account #: *****4035
Current Balance: \$2,847.80

Dear Ana Santos:

INCOME TAX SEASON IS HERE. A PERFECT TIME TO RESOLVE YOUR FINANCIAL MATTERS.

We are authorized to extend to you the opportunity to settle this debt.

Below are the options that are being extended, please select one:

- A. One payment: You pay 45% of the balance in one payment of \$1,281.51. Payment must be received on or before February 18, 2011.
- B. Two payments: You pay 55% of the balance in two monthly payments of \$783.14 each. First payment due February 18, 2011 and Second payment due on or before March 18, 2011.
- C. Twelve payments: You pay 65% of the balance in 12 monthly payments of \$154.26 each. First payment due February 18, 2011 followed by 11 consecutive payments due on the same day each successive month thereafter.

Please forward the payment payable to Kirchenbaum & Phillips, P.C., to our office at 3000 Hempstead Turnpike, Fourth Floor, Levittown, New York 11756. Please be sure to include our file number C511862 on the payment to ensure prompt crediting. If your check is dishonored by the issuing institution for any reason, there will be an additional charge of \$20.00 for each time that the check is deposited.

We accept various methods of payment for your convenience. You can also make payments online from your bank account at kppayment.com. Please use your Reference Number C511862 65.

You may also contact your account representative MS. GRANT who can be reached at 866-746-1144 ext. 374.

Very truly yours,

Kirschenbaum & Phillips, P.C.

WE ARE NOT PROVIDING THIS AS AN ATTEMPT TO OBTAIN A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

SECTION 6011-TAX3

3000 Hempstead Turnpike
4th Floor
Levittown NY 11756-1338

RETURN SERVICE REQUESTED

January 30, 2011

*****4035-A-TAX3- 477358323

|||||

Ana Santos
1768A Sterling Pl
Brooklyn NY 11233-4502

Re: Our File #: C511862
KMT GROUP, LLC A/A/O MBNA
CONSUMER FINANCE
ANA SANTOS
Account #: *****4035
Current Balance: \$2,847.80

Kirschenbaum & Phillips, P.C.
3000 Hempstead Turnpike, 4th Floor
Levittown NY 11756-1381

|||||